

**TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 307.12, 307A.2, 321.449 and 321.450, the Iowa Department of Transportation (Department), on November 14, 2017, adopted an amendment to Chapter 520, “Regulations Applicable to Carriers,” Iowa Administrative Code.

The Department is amending rule 761—520.8(321), planting and harvesting periods. The Federal Motor Carrier Safety regulations established by the Federal Motor Carrier Safety Administration (FMCSA) impose hours-of-service limits on drivers of commercial motor vehicles, but exempt certain agricultural operations from those hours-of-service limits during the planting and harvesting period. 49 CFR 395.1(k) states that the hours-of-service limits imposed by 49 CFR Part 395, “Hours of Service of Drivers,” do not apply “during planting and harvesting periods, as determined by each State, to drivers transporting

“(1) Agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;

“(2) Farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or

“(3) Farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.”

The Department implements this exception through rule 761—520.8(321). Rule 761—520.8(321) currently sets the planting and harvesting period in Iowa as the period from March 15 through June 30 and October 4 through December 14.

This set and limited time period has proved too restrictive and inflexible, as it often does not align to changing weather and other conditions that may accelerate, delay, extend, or otherwise alter the planting and harvesting period. To remedy this, other states have defined their planting and harvesting period for this purpose to extend throughout the calendar year, January 1 to December 31, and the FMCSA has accepted this approach. The Department is amending rule 761—520.8(321) to take the same approach and define the planting and harvesting period in Iowa as January 1 to December 31. This change will allow Iowa drivers engaged in the subject agricultural operations to take advantage of the federal hours-of-service exemption whenever they are engaged in those operations, regardless of fluctuations in the actual planting and harvesting period in a given year. The change will also make this declaration of the planting and harvesting period match the declaration of the planting and harvesting period made for restricted commercial driver’s licenses (CDLs), which are licenses issued to suppliers or employees of suppliers of agricultural inputs that allow the license holder to operate commercial motor vehicles for the purpose of supplying agricultural inputs during planting and harvesting without applying and testing for a full CDL. In January 2017, the Department amended rule 761—607.49(321) to similarly change the planting and harvesting period declared for operation under restricted CDLs from March 15 through June 30 and October 4 through December 14 to January 1 to December 31. Making these declarations match will ensure that agricultural input drivers with restricted CDLs will not be subjected to inconsistent regulations that unnecessarily require them to comply with hours-of-service requirements while performing subject agricultural operations.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and participation are impracticable. 49 CFR 395.20 provides that a driver subject to the hours-of-service requirements set forth in 49 CFR Part 395 must use an electronic logging device that meets functional specifications established by the FMCSA in Part 395 to record the driver’s hours of service, beginning December 18, 2017. Making this change by emergency rule making will ensure that the change is effective beginning December 18, 2017, which will ensure that drivers engaged in agricultural operations who

are otherwise exempt from the hours-of-service requirements will not have to unnecessarily invest in and use electronic logging devices.

In compliance with Iowa Code section 17A.4(3)“a,” the Administrative Rules Review Committee at its November 14, 2017, meeting reviewed the Department’s determination and the amendment and approved the emergency adoption.

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Department further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective December 18, 2017. This amendment confers a benefit on the public and again ensures that drivers engaged in agricultural operations who are otherwise exempt from the hours-of-service requirements will not have to unnecessarily invest in and use electronic logging devices.

This amendment may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A shall be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Strategic Communications and Policy, 800 Lincoln Way, Ames, Iowa 50010; email address: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us). The request must be received by the Department’s rules administrator no later than February 14, 2018.

This amendment is also published herein under Notice of Intended Action as **ARC 3482C** to allow for public comment.

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

After analysis and review of this rule making, the Department finds that this amendment is expected to have a positive impact on private sector jobs and employment opportunities in Iowa. Drivers engaged in agricultural operations subject to the exemption and businesses that employ them will have more flexibility to conduct those operations throughout the year, regardless of year-to-year fluctuations in the planting and harvesting period, and will be able to avoid unnecessarily investing in and using electronic logging devices, which should improve performance, profitability, and opportunity for employment.

This amendment is intended to implement Iowa Code sections 321.449 and 321.450.

This amendment will become effective on December 18, 2017.

The following amendment is adopted.

Amend rule 761—520.8(321) as follows:

**761—520.8(321) Planting and harvesting periods period.** In accordance with the provisions of 49 CFR ~~395.4~~ 395.1(k), the planting and harvesting ~~periods~~ period pertaining to agricultural operations ~~are March 15 through June 30 and October 4 through December 14~~ is January 1 through December 31.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

[Filed Emergency 11/14/17, effective 12/18/17]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/6/17.